



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: JUNE 16, 2009

ITEM NUMBER: \_\_\_\_\_

**SUBJECT: APPEAL OF ZONING APPLICATION ZA-09-12  
IN 'N OUT BURGER – 3211 HARBOR BOULEVARD**

**DATE: JUNE 2, 2009**

**FROM: DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: WILLA BOUWENS-KILLEEN, AICP, PRINCIPAL PLANNER  
KIMBERLY BRANDT, AICP, ACTING DEVELOPMENT SVS. DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS KILLEEN, 714.754.5153**

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## **RECOMMENDATION:**

Uphold, reverse, or modify Planning Commission's action on Zoning Application ZA-09-12, a minor conditional use permit for a new In 'n Out Burger.

## **BACKGROUND:**

An In 'n Out Burger is proposed to replace the vacant Kaplan's Restaurant, located just northwest of the Harbor Boulevard and Gisler Street intersection.

On April 9, 2009, the Zoning Administrator approved ZA-09-12, consisting of a minor conditional use permit to construct an approximately 3,200 sq.ft., drive-through restaurant with outdoor seating. As part of the application, the applicant received approval for the outdoor seating to be within 10 feet of the drive-through lane; an administrative adjustment to allow a 17-foot deep planter along Gisler Avenue (20 feet required); and a minor modification to reduce the southeast corner of the front landscaped setback along Harbor Boulevard to 16 feet versus the 20 feet required by Code. With the exception of these requests, the project complies with all applicable standards for development in the C1 zone. On April 13, 2009, Planning Commission Chair Jim Righeimer requested review of the approval.

At their meeting of May 11, 2009, Planning Commission approved the project with the addition of condition of approval (number 21). On May 18, 2009, In 'n Out filed an appeal stating concerns with three of the conditions of approval.

## **ANALYSIS:**

The applicant has concerns with the following three conditions of approval:

3. Upon the effective date of approval of the minor conditional use permit, applicant shall immediately begin working with the Transportation Services Division and Caltrans to replace the chain link fence along the off ramp with a combination wrought iron with pilaster supports or other fence/barrier acceptable to both the City and Caltrans, and to landscape the area between the property line and V

ditch consistent with abutting on-site landscape. The off-site fencing and landscaping plan shall be submitted for review and approval to the Planning Division. Issuance of the certificate of occupancy shall not be withheld pending the completion of this condition; however, the applicant shall provide documentation of the progress and estimated time of completion of this condition prior to release of the certificate of occupancy.

Discussion: The Zoning Administrator sought a means to ensure that the freeway off-ramp frontage of the property would be as attractive as the remainder of the site. Consequently, the condition requires the applicant work with Caltrans to replace the chain link fence and landscaping along the northern property line with fencing and landscaping acceptable to Planning staff. It was recognized, however, that processing through Caltrans can be lengthy, so the condition allows construction to be initiated and the Certificate of Occupancy granted prior to completion of the condition. The applicant is concerned that the condition is too open-ended to assess its full impact on the project.

The City has in the past, based on developer's interest, worked with Caltrans to transfer maintenance responsibilities of certain landscaped areas from Caltrans to the property owner. The property owner, through the City, acquires rights to improve and maintain landscaping within the area agreed to with Caltrans. As the Planning Commission approved condition includes the replacement of fence in addition to landscaping, additional processing will be required by Caltrans involving their design and maintenance divisions. Based on preliminary discussions with Caltrans, additional items such as drainage may also be reviewed by Caltrans. The permit process could take about six to nine months. The property owner will be required to maintain the fence as well as landscaping within the maintenance area.

13. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.

Discussion: This is a standard condition placed on projects of this nature to remind the applicant of their responsibility to conduct the business in a manner so it does not impact the neighborhood, especially residents. Since the closest residential property is located approximately 189 feet to the northwest, and only 6 of the 133 rooms of the Vagabond Inn face the In 'n Out parking lot, Planning staff does not anticipate that the drive-through restaurant will impact neighbors.

21. To screen the ARCO station from off-site views, construct a 5- to 6- foot high decorative block wall along the interior east and south property lines, where permitted, under the direction of Planning staff.

Discussion: This condition was added by Planning Commission at their meeting, to protect views for In 'n Out customers.

The staff report prepared for the May 11, 2009 Planning Commission meeting is attached and is also available on-line at <http://www.ci.costa-mesa.ca.us/council/planning/2009-05-11/051109ZA0912Notice.pdf> . The traffic impact assessment requested and received by the City's Transportation Services Division is not attached but is available online at the same link and is found on pages 10 through 74 of the May 11, 2009 staff report.

## **ALTERNATIVES CONSIDERED:**

City Council may consider the following alternatives:

1. *Uphold or modify the Commission's action and approve the Planning Application.* Council's approval would allow the applicant to construct the In 'n Out Burger with the conditions of approval imposed by Planning Commission. Council's approval may also include modifications to the applicant's original requests and/or to the conditions of approval.
2. *Reverse the Commission's action and deny the Planning Application.* If denied, the applicant would not be able to move forward with proposed project. However, the applicant could resubmit the proposed project in six months for reconsideration.

## **ENVIRONMENTAL REVIEW:**

If approved, this application has been deemed exempt from the provisions of the California Environmental Quality Act under Section 15302 for the reconstruction of existing structures. If denied, pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.

## **FISCAL REVIEW:**

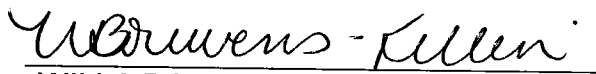
This application does not require fiscal review

## **LEGAL REVIEW:**

The City Attorney's Office has reviewed the resolution and approved it as to form.

## **CONCLUSION:**

The Planning Commission found the project to be compatible with the neighborhood and a complementary use for the adjacent motel. Upholding the Commission's action on the project will allow the property to be improved to current standards including the provision of landscaping.

  
WILLA BOUWENS-KILLEEN, AICP  
Principal Planner

  
KIMBERLY BRANDT, AICP  
Acting Development Svs. Director

DISTRIBUTION: City Manager  
City Attorney  
Deputy City Manager – Dev. Svs. Dir.  
Public Services Director  
City Clerk (2)  
Staff (4)  
File (2)

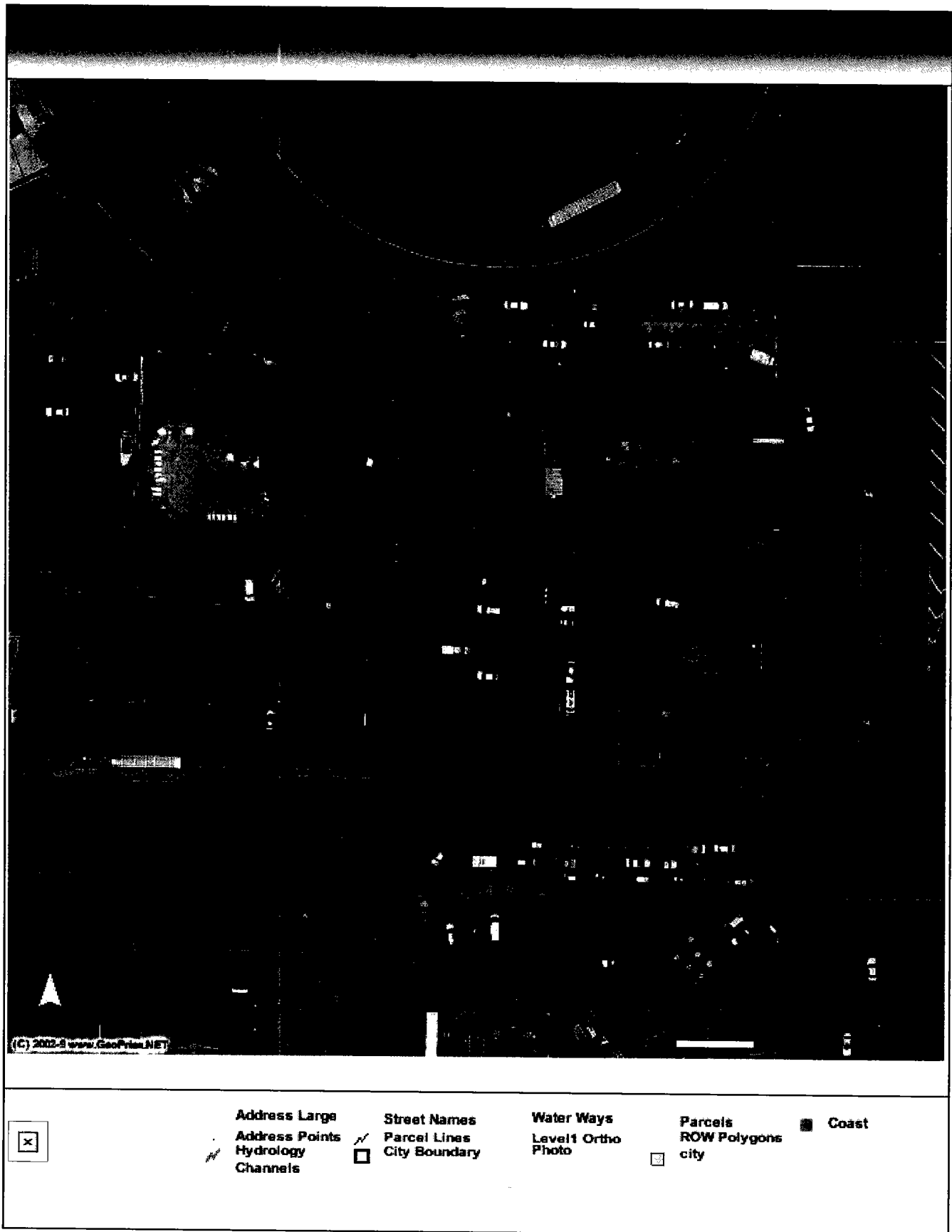
John Puente  
13502 Hamburger Lane  
Baldwin Park, CA 91706

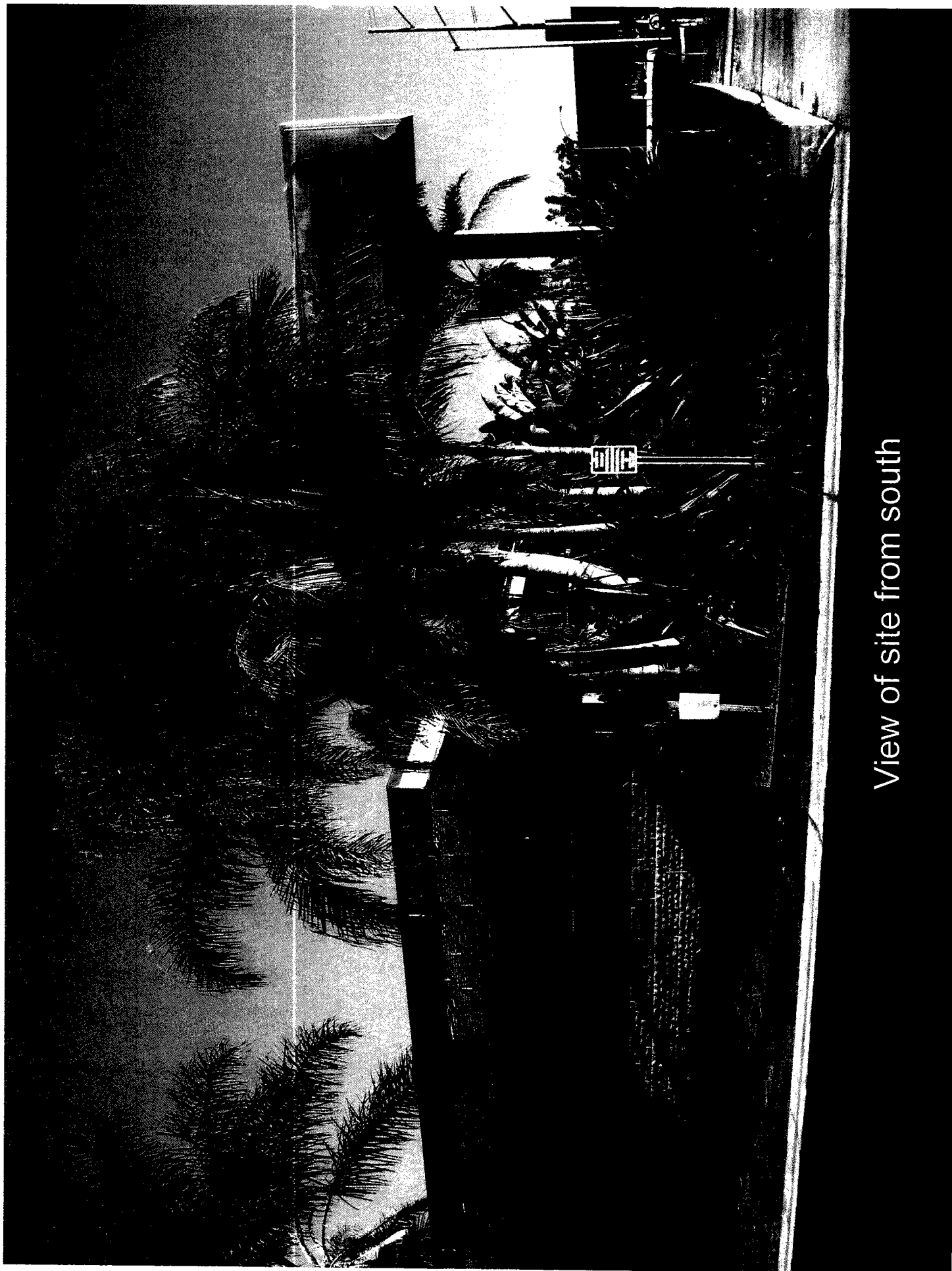
June O'Connor  
P.O. Box 1942  
Newport Beach, CA 92649

**Attachments:**

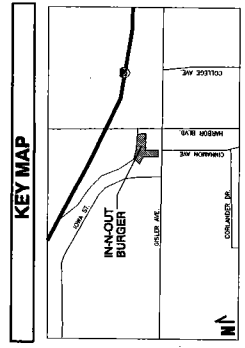
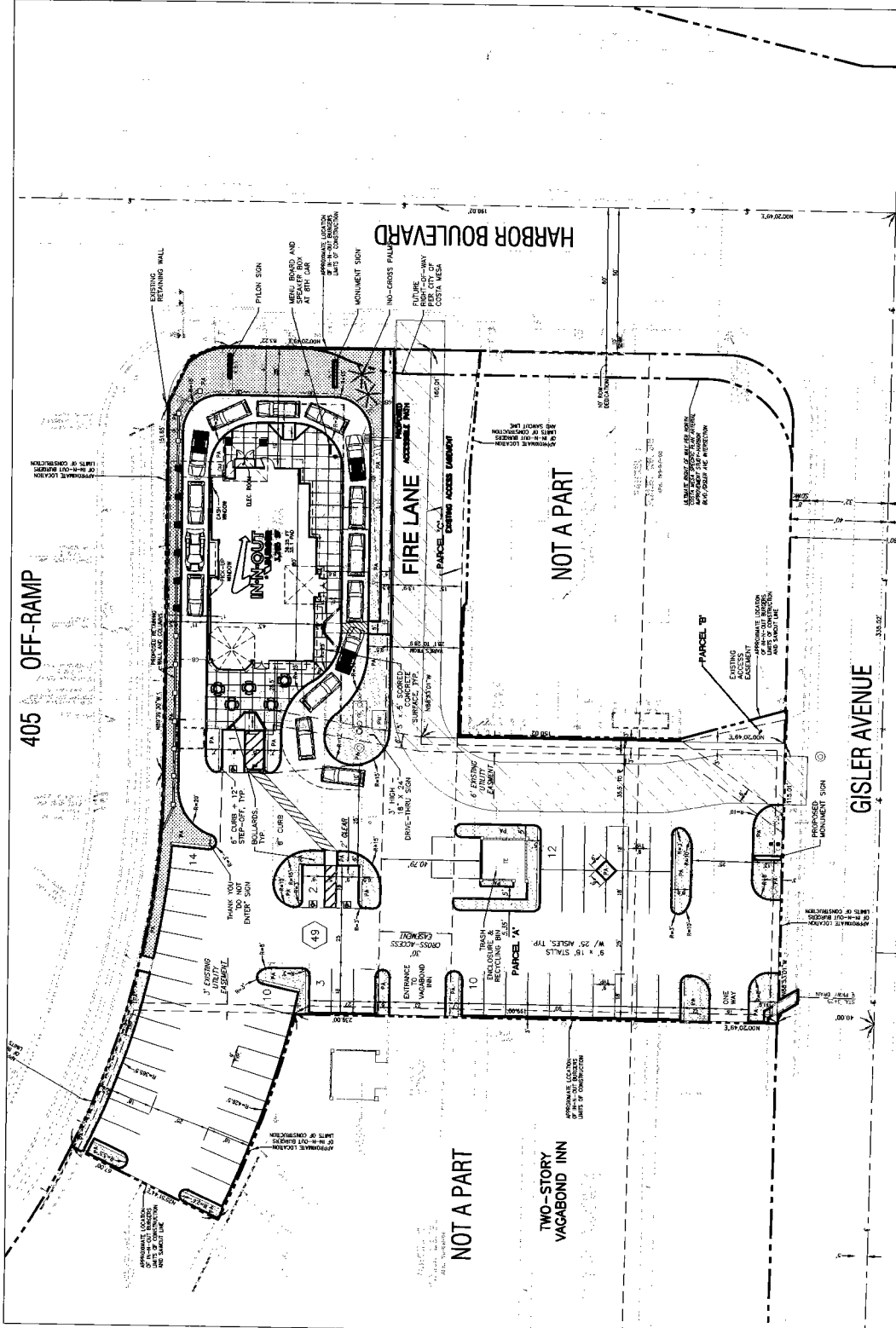
1. Location Map
2. Plans
3. Draft City Council Resolutions
4. Appeal form
5. Minutes of Planning Commission meeting
6. Planning Commission staff report
7. Planning Commission resolution

File Name: 061609ZA0912Appeal	Date: 060209	Time: 10:00 a.m.
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View of site from south



PROJECT SUMMARY		
PROJECT DESCRIPTION		
LOCATION:	COSTA MESA, CA	
ZONING CLASSIFICATION		
JURISDICTION	CITY OF COSTA MESA, CA	
EXISTING ZONE	LOCAL BUSINESS (C)	
PROPOSED USE	LOCAL BUSINESS (C)	
SITE AREA		
IN-N-OUT BURGER	±1.19 AC (±51,871 SF)	
SITE COVERAGE	±5.32% (±2,752 SF/AC)	
BUILDING AREA		
IN-N-OUT BURGER	3,265 SF	
PARKING SUMMARY		
USER	REQUIRED RATIO	
IN-N-OUT BURGER	10 SPACES PER 1,000 SF (FOR 36 SPACES) SP/1,000SF (AFTER)	
TOTAL	36	
STANDARD HANDICAP:	3	
CAR STACKING IN DRIVE-THRU: 15		
BUILDING SETBACKS		
FRONT	20'-0"	
SIDE	15'-0" ON ONE SIDE	
REAR	0'-0"	
LEFT	0'-0"	
RIGHT	0'-0"	
DRAWING ISSUE/REVISION RECORD		
DATE	NARRATIVE	INITIALS
02-06-09	PREPARING SITE PLAN INO, CA-COSTA MESA (NWC-HARBOR & GISLER)-11 PER UPDATED ALTA WITH BIGGER PROTOTYPE	KG
02-19-09	PREPARING SITE PLAN INO, CA-COSTA MESA (NWC-HARBOR & GISLER)-11 PER UPDATED ALTA AND GRADING AND UTILITY PLAN RECEIVED FROM CIVIL	CD
02-27-09	PREPARING SITE PLAN INO, CA-COSTA MESA (NWC-HARBOR & GISLER)-11; MODIFIED SCREEN WALL AND COLUMNS PER COMMENTS FROM KICK-OFF MEETING.	KG

**PROJECT NOTES**

1. THIS CONCEPTUAL SITE PLAN IS FOR PLANNING PURPOSES ONLY. SITE SPECIFIC INFORMATION FOR CONSTRUCTION CONDITIONS, ZONING, PARKING LANDSCAPE REQUIREMENTS MUST BE VERIFIED.

2. ALL CURB CUTS AND TRAFFIC SIGNALS SHOWN, EXISTING AND PROPOSED, MUST BE VERIFIED.

3. THIS SITE PLAN IS BASED ON AN ALTA SURVEY PREPARED BY K&A ENGINEERING DATED 02/05/09 AND A CAD FILE OF THE ALTA SURVEY PREPARED BY K&A ENGINEERING DATED 02/11/09.

MINOR CONDITIONAL USE PERMIT/  
ADMINISTRATIVE ADJUSTMENT NO. **2A-09-12**

**Approval in Concept**

SUBJECT TO CONDITIONS

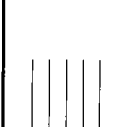
CITY OF COSTA MESA  
PLANNING DEPT.

BY: LAB/UCU DATE: 4-9-09

APPROVAL: MIKE BAILEY  
JOHN PUENTE  
WALTER DEISLER  
JEFF RUSSEL  
DOUG COOPER

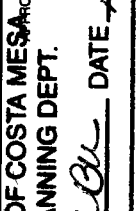
**INO, CA-COSTA MESA (NWC HARBOR & GISLER)-11m**

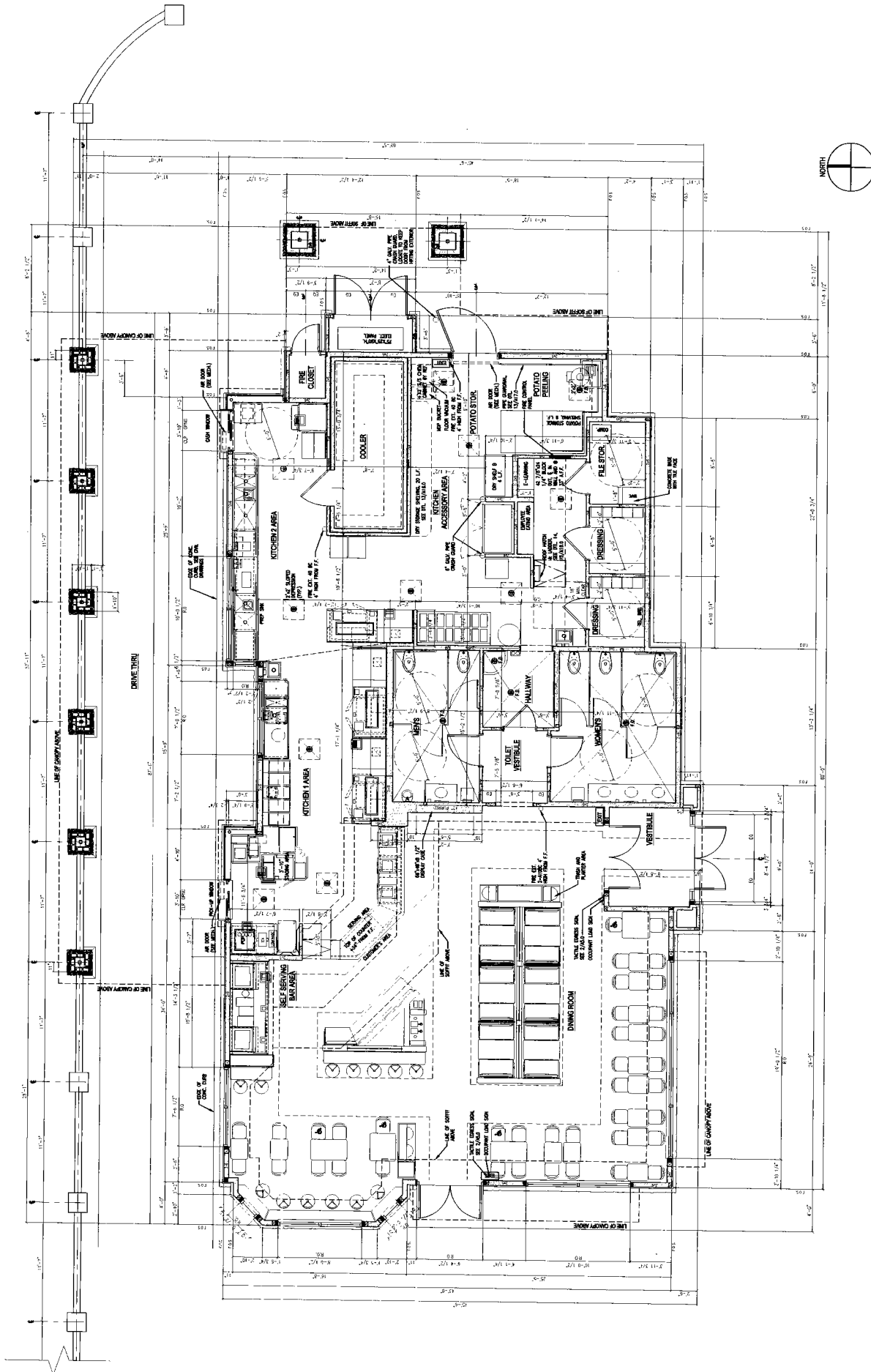
**3211 HARBOR BOULEVARD**



20080575.0

**GreenbergFarrow**  
1620 Main Street, Suite 1150  
Costa Mesa, CA 92626  
T: 949 236 0460 F: 949 236 0470





**GreenbergFarrow**  
 1920 Main Street, Suite 1150  
 Costa Mesa, CA 92626  
 T: 949.256.0420 F: 949.256.0479



APPROVAL: MIKE BAILEY  
 JOHN PUENTE  
 WALTER DESSLER  
 JEFF RUSSELL  
 DOUG COUPER

IN-N-OUT BURGER  
 3211 HARBOR BLVD. (X GISLER AVE.)  
 COSTA MESA, CA  
 20080575.0

**FLOOR PLAN**  
 SCALE: 1/4" = 1'-0"  
**A1.0**

02/27/2009



# FINISH SCHEDULE

## FINISH MATERIAL

- 1 METAL ROOF
- 2 STUCCO WITH SAND FLAT TEXTURE FINISH
- 3 CLEAR ANODIZED ALUMINUM STOREFRONT DOORS
- 4 CLEAR ANODIZED ALUMINUM WINDOWS
- 5 PVC COATED WICK AWNINGS
- 6 STONE VENEER
- 7 ILLUMINATED LOGO SIGN UNDER SEPARATE PERMIT
- 8 L.E.D. DOUBLE BAND LIGHTING UNDER SEPARATE PERMIT

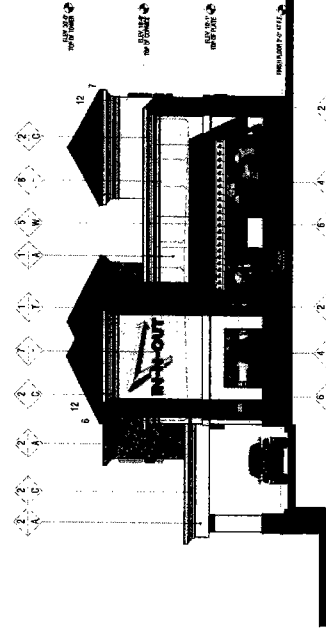
## FINISH COLOR

- A DUNN EDWARDS - DEW339 - BONE CHINA
- B DUNN EDWARDS - DEW339 - BONE CHINA
- C DUNN EDWARDS - DEW339 - BONE CHINA
- S CORDADO STONE - CAMEL MOUNTAIN EASTERN LEDGESTONE
- T EAGLE ROOFING PRODUCTS CAPSTRAND STYLE 3125 TERRACOTTA
- W IN-N-OUT CUSTOM COLORS

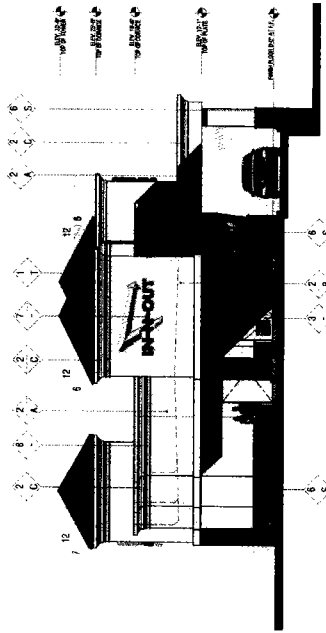
NOTE:  
Colors shown on these elevations are for illustration purposes only. For actual colors, refer to manufacturer's samples.

SCALE: 1/8"=1'-0"

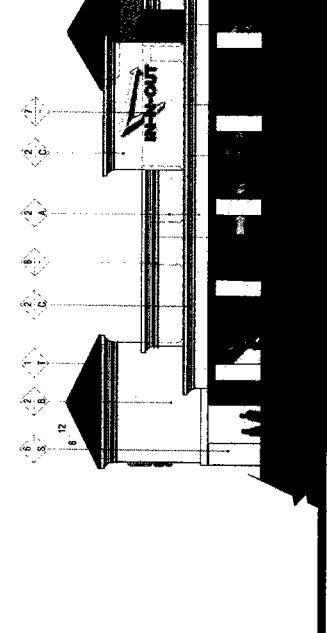
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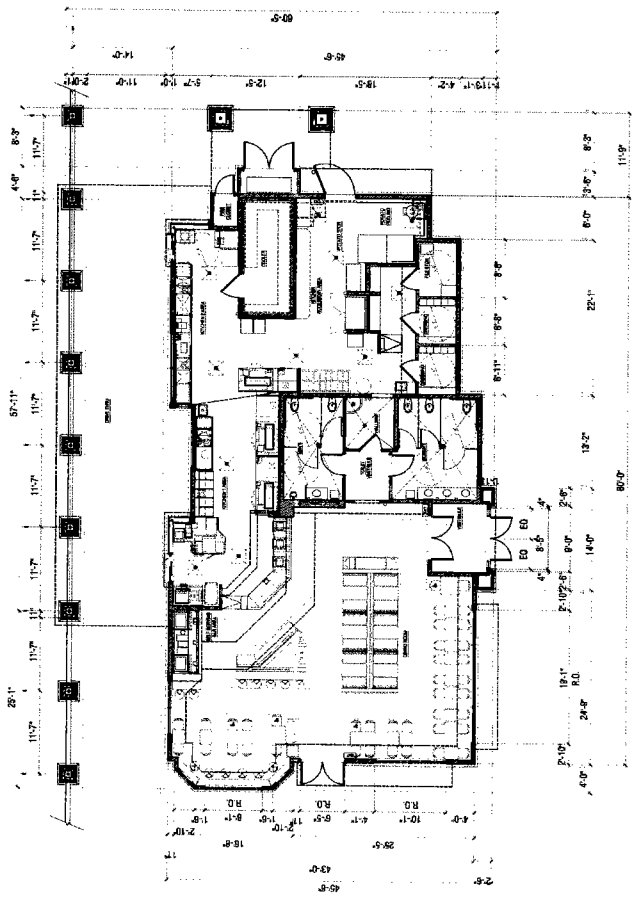
WEST ELEVATION  
SCALE: 1/8"=1'-0"



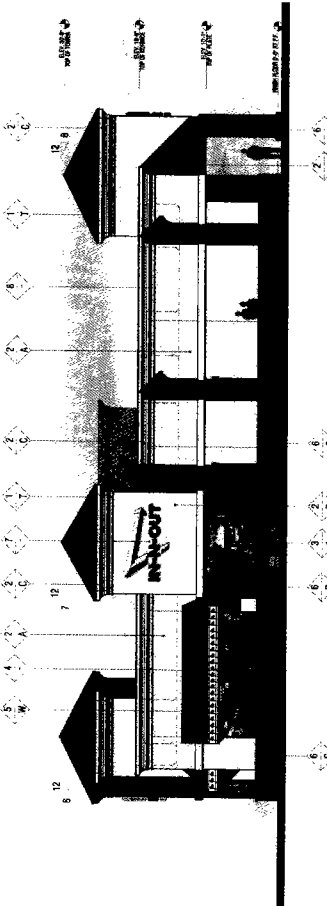
EAST ELEVATION  
SCALE: 1/8"=1'-0"



NORTH ELEVATION  
SCALE: 1/8"=1'-0"



FLOOR PLAN  
SCALE: 1/8"=1'-0"



SOUTH ELEVATION  
SCALE: 1/8"=1'-0"

**GreenbergFarrow**  
1920 Main Street, Suite 1150  
Costa Mesa, CA 92626  
T: 949.256.0400 F: 949.256.0479

**IN-N-OUT**  
BURGER

APPROVAL: MIKE BAILEY  
JOHN PUENTE  
WALTER DESSLER  
JEFF RUSSELL  
DOUG COUPER

**IN-N-OUT BURGER**  
NWC GISLER AVE. & HARBOR BLVD.  
COSTA MESA, CA  
20080515.0

**FLOOR PLAN & ELEVATIONS**  
SCALE: 1/8"=1'-0"

02/27/2009



**GreinerFarrow**  
 1020 Main Street, Suite 1150  
 Irvine, CA 92614  
 Tel: 949 259 0400 Fax: 949 259 0475

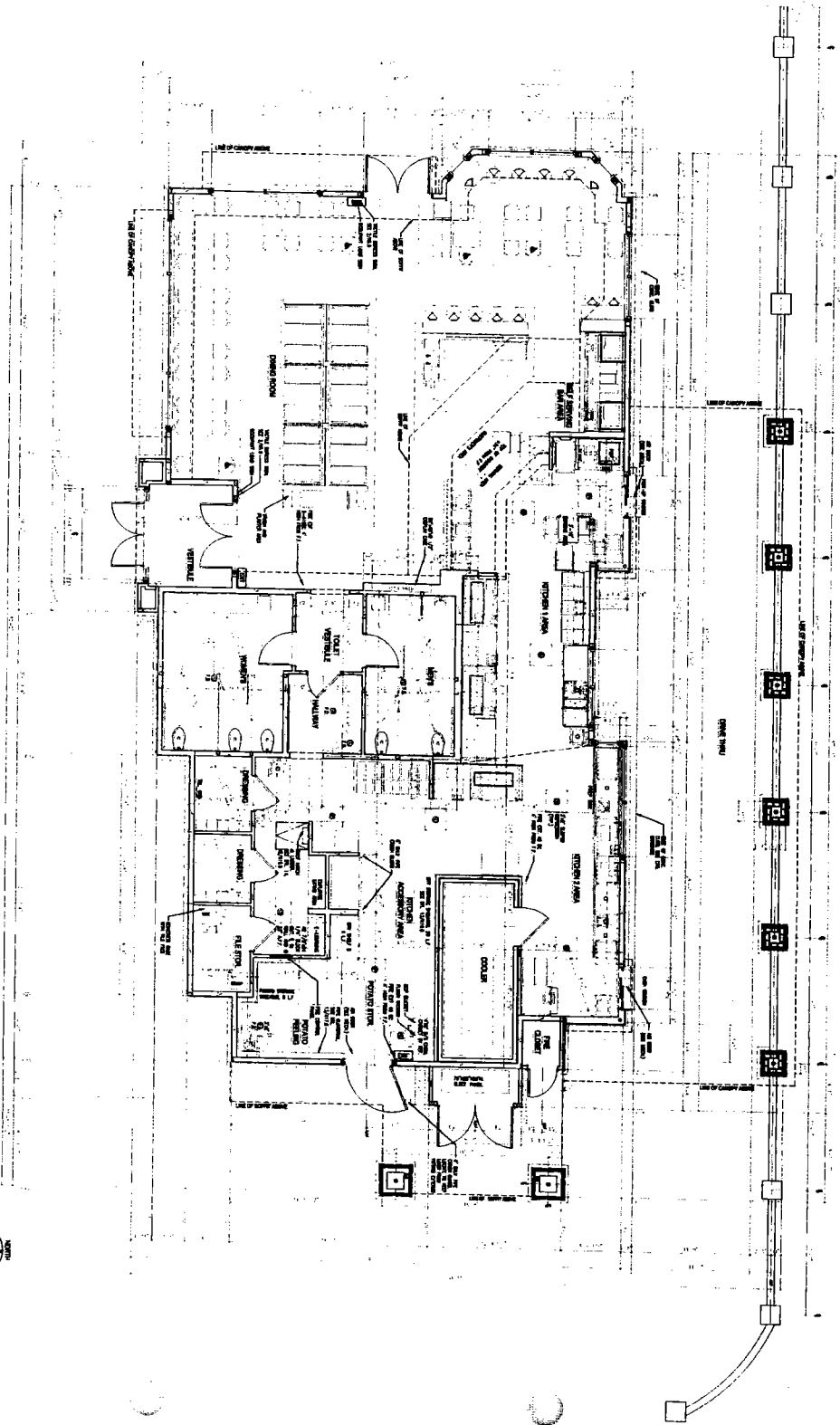
**IN-N-OUT**  
 EUROPE

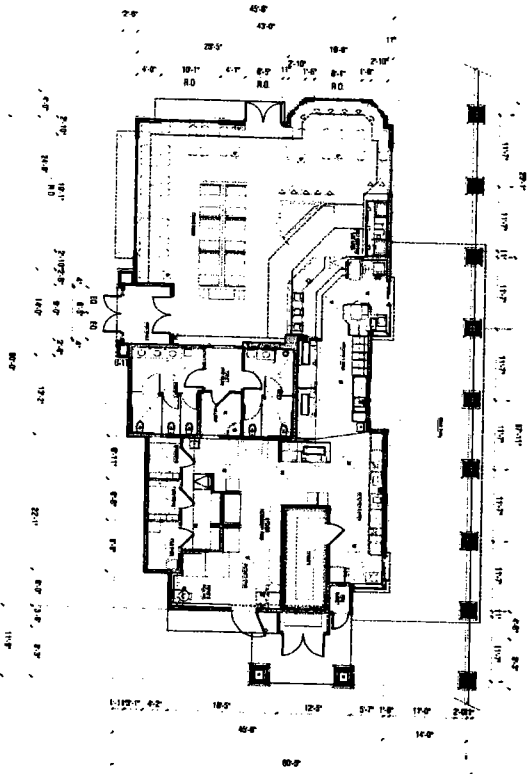
APPROVAL: WINE BALEY  
 JOHN F. BENT  
 JAMES F. BENT  
 JEFF. BENT  
 DONG COUPEN

**IN-N-OUT BURGER**  
 3211 HARBOR BLVD. (S.E. AVE.)  
 COSTA MESA, CA  
 92626-5250

**FLOOR PLAN**  
 SCALE: 1/8" = 1'-0"  
**A1.0**

02/27/2009

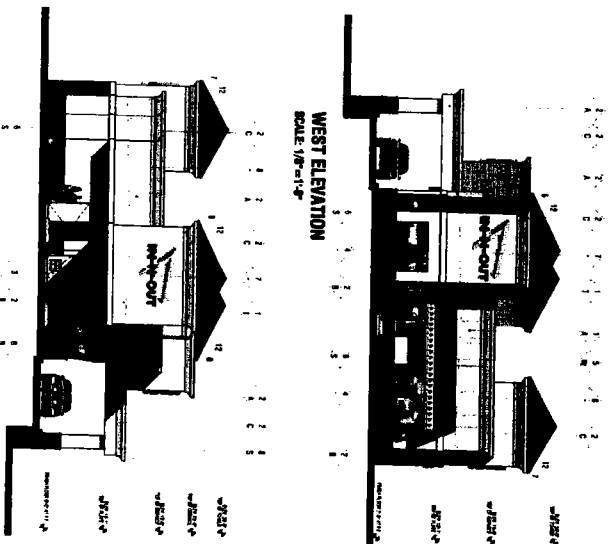




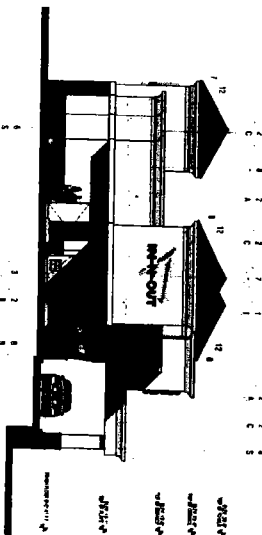
**FLOOR PLAN**  
SCALE: 1/8"=1'-0"



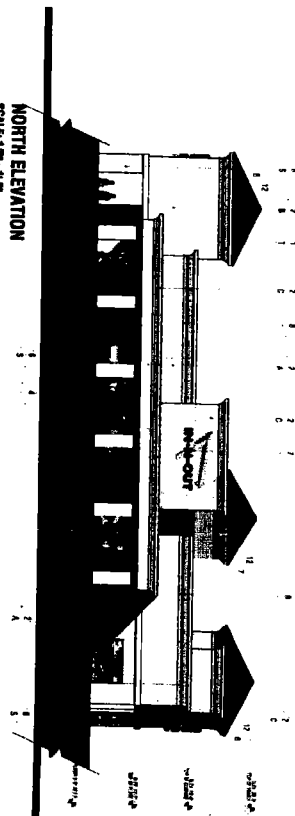
**SOUTH ELEVATION**  
SCALE: 1/8"=1'-0"



**WEST ELEVATION**  
SCALE: 1/8"=1'-0"



**EAST ELEVATION**  
SCALE: 1/8"=1'-0"



**NORTH ELEVATION**  
SCALE: 1/8"=1'-0"

**FINISH SCHEDULE**

- FRESH LAYERS**
- 1 ACETAL ROOF
  - 2 STUCCO WITH SAND FLOUT TYPICAL FINISH
  - 3 CLEAN ANODIZED ALUMINUM STOREFRONT DOORS
  - 4 CLEAN ANODIZED ALUMINUM WINDOWS
  - 5 PVC COATED WOOD AWNINGS
  - 6 STONE FINISH
  - 7 ALUMINUM/DOOR AND WINDOW SEPARATE FINISH
  - 8 L.E.D. DOUBLE BAND LIGHTING UNDER SEPARATE FINISH
- FRESH COLOR**
- A DAWN EDWARDS - LINGERER - ROSE CHINA
  - B DAWN EDWARDS - LINGERER - ROSE CHINA
  - C DAWN EDWARDS - LINGERER - ROSE CHINA
  - D DAWN EDWARDS - LINGERER - ROSE CHINA
  - E CHROMASTONE - CHAMEL MOUNTAIN EASTERN
  - F LEXINGTON
  - G FAIRBANKS PRODUCTS CANTERBURY STONE
  - H 3115 TERRACOTTA
  - I IN-N-OUT CUSTOM COLORS

NOTE:  
COLORS SHOWN ON THESE ELEVATIONS ARE FOR ILLUSTRATION PURPOSES ONLY. FOR COLOR CORRECTION TO MATCH EXISTING SAMPLES.

SCALE: 1/8"=1'-0"

4 0 4 6 16 24 32

**GreenerFuture**  
1000 California Street, Suite 1100  
San Francisco, CA 94109  
T 415 778 0400 F 415 778 0415

**IN-N-OUT**  
BURGER

APPROVAL: JAMES BAILEY  
CHAIRMAN  
WALTER DRESSER  
JEFF RUSSELL  
DOUG COOPER

**IN-N-OUT BURGER**  
NWC GISLER AVE. & HARBOR BLVD.  
COSTA MESA, CA

**FLOOR PLAN & ELEVATIONS**  
SCALE: 1/8"=1'-0"  
02/27/2009

**RESOLUTION NO. 09-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF COSTA MESA APPROVING ZONING APPLICATION  
ZA-09-12**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES  
AS FOLLOWS:

WHEREAS, an application was filed by John Puente authorized agent for property owner June O'Connor, with respect to the real property located at 3211 Harbor Boulevard, requesting a minor conditional use permit for an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating; an administrative adjustment to allow a 17-foot deep landscaped setback along Gisler Avenue; and a 16-foot deep landscaped setback along a portion of Harbor Boulevard in the C1 zone; and

WHEREAS, Planning Commission Chair James Righeimer requested a review of ZA-09-12 on April 13, 2009; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 27, 2009 and May 11, 2009, with Planning Commission approving the project on May 11, 2009; and

WHEREAS, an appeal was filed on May 19, 2009 by the applicants; and

WHEREAS, a duly noticed public hearing was held by the City Council on June 16, 2009.

NOW, THEREFORE BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the City Council hereby **APPROVES** Zoning Application ZA-09-12 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Zoning Application ZA-09-12 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B", as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED The City Clerk shall certify to the passage and adoption of this Resolution and it shall thereupon take effect and be in force.

**PASSED AND ADOPTED this 16<sup>th</sup> day of June, 2009.**

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA   )  
  )ss  
COUNTY OF ORANGE    )

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of said City Council held on the 16<sup>th</sup> day of June, 2009, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
City Clerk  
City Council of the City of Costa Mesa

## EXHIBIT "A"

**FINDINGS (If approved)**

- A. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed drive-through restaurant with outdoor seating is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, with the exception of the proposed administrative adjustment and minor modification for reduced setback landscaped area and the placement of outdoor seating within 10 feet of the drive-through lane, the proposed project satisfies all applicable development standards. The closest residential properties are 189 feet to the northwest and a motel separates the residences and the proposed use. Additionally, no alcoholic beverages will be served or sold from this site and the use will provide a service to motel patrons. Although two of the five outdoor tables will be less than 10 feet from the drive-through lane, the two seats will be at the entry of the approximately 240-foot long drive-through lane, which could reduce the time cars idle next to the seats. Additionally, the majority of the seating is provided inside the building. Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.
- B. The information presented substantially complies with section 13-29(g)(1) of the Costa Mesa Municipal Code in that special circumstances applicable to the property exist to justify granting of the administrative adjustment from landscaped setback requirements along Gisler Avenue, as modified by the Zoning Administrator. Strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by owners of other property in the vicinity under identical zoning classification. Specifically, existing drive aisles and parking on the two abutting properties affect the design of the landscaping along this street frontage. The deviation shall be subject to such conditions so as to assure that approval of the administrative adjustment from setback requirements would not constitute a grant of special privilege inconsistent with limitation upon other properties in the vicinity and zone in which the property is situated. Granting the variance will not allow a use, density, or intensity, which is not in accordance with the general plan designation and specific plan for the property.
- C. The information presented substantially complies with section 13-29(g)(6) of the Costa Mesa Municipal Code in that the maximum 4-foot reduction in the landscape setback along Harbor Boulevard will not be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood and the improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space, and any other applicable features relative to a compatible and attractive development. Specifically, this reduction is the result of a future right turn pocket that will begin on this property and continue to the Gisler intersection. The remainder of the setback is provided as required, and additional planter area will be provided behind this future turn pocket, which will off-set some of the reduction. Lastly, the building is setback approximately 45 feet from Harbor Boulevard.



- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15302, for the reconstruction of existing structures.
- E. The project, as condition, is consistent with Chapter XII, Article 3, Transportation System Management of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated by the payment of traffic impact fees.

**EXHIBIT "B"**

**CONDITIONS OF APPROVAL**

- Plng. 1. Incorporate the two-foot bumper overhang of parking spaces into abutting on-site landscaped areas.
2. Incorporate Low Impact Development (LID) design techniques into all landscape areas, under the direction of Planning and Public Services staff.
3. Upon the effective date of approval of the minor conditional use permit, applicant shall immediately begin working with the Transportation Services Division and Cal Trans to replace the chain link fence along the off ramp with a combination wrought iron with pilaster supports or other fence/barrier acceptable to both the City and Cal Trans, and to landscape the area between the property line and V ditch consistent with abutting on-site landscape. The off-site fencing and landscaping plan shall be submitted for review and approval to the Planning Division. Issuance of the certificate of occupancy shall not be withheld pending the completion of this condition; however, the applicant shall provide documentation of the progress and estimated time of completion of this condition prior to release of the certificate of occupancy.
4. As feasible, reduce the width of the three access driveways as close as possible to a 20-foot minimum width.
5. Increase the depth of the easternmost landscape planter along Gisler Avenue to a minimum 17 feet.
6. Provide landscaping along the east property line where it abuts landscaping on the gas station property.
7. The subject property's ultimate finished grade level may not be filled/raised unless necessary to provide proper drainage, and in no case shall it be raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site stormwater flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public stormwater facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties.
8. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
9. The conditions of approval and ordinance or code provisions of Zoning Application ZA-09-12 shall be blueprinted on the face of the site plan as part of the plan check submittal package.

10. The applicant shall contact the Planning Division to arrange Planning inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
11. It is recommended that the project incorporate green building design and construction techniques where feasible. The applicant may contact the Building Safety Division at 714.754.5273 for additional information.
12. The restaurant shall be limited to the type of operation described in the staff report. Any change in the operational characteristics including, but not limited to, hours of operation, sale of alcoholic beverages or provision of entertainment, will require approval of an amendment to the minor conditional use permit, subject to either Zoning Administrator or Planning Commission approval.
13. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
14. Transformers, backflow preventers, and any other above-ground utility improvements, shall be located outside of the required street setback area and shall be screened from view, under the direction of Planning staff.
15. Hours of operation for customer service are limited to 6 a.m. to 1 a.m. Monday through Thursday and 6 a.m. to 1:30 a.m. Friday, Saturday, and Sunday.
16. On-site controls (i.e., cones and employees) shall be instituted during peak operating times to minimize idling vehicle emissions.
17. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts shall be permitted.
18. Truck deliveries shall not occur between 8 p.m. and 4 a.m.
- Eng. 19. During construction, maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
- Trans 20. Install a sign at the exit of the drive-through lane directing drivers to exit Gisler Avenue to access the I-405 Freeway. A similar sign shall be located facing eastbound drivers as they enter the aisle leading to Harbor Boulevard.
- Plng. 21. To screen the ARCO station from off-site views, construct a 5- to 6-foot  
Comm high decorative block wall along the interior east and south property lines, where permitted, under the direction of Planning staff.

**RESOLUTION NO. 09-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COSTA MESA DENYING ZONING APPLICATION ZA-09-12**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS  
FOLLOWS:

WHEREAS, an application was filed by John Puente authorized agent for property owner June O'Connor, with respect to the real property located at 3211 Harbor Boulevard, requesting a minor conditional use permit for an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating; an administrative adjustment to allow a 17-foot deep landscaped setback along Gisler Avenue; and a 16-foot deep landscaped setback along a portion of Harbor Boulevard in the C1 zone; and

WHEREAS, Planning Commission Chair James Righeimer requested a review of ZA-09-12 on April 13, 2009; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 27, 2009 and May 11, 2009, with Planning Commission approving the project on May 11, 2009; and

WHEREAS, an appeal was filed on May 19, 2009 by the applicants; and

WHEREAS, a duly noticed public hearing was held by the City Council on June 16, 2009.

NOW, THEREFORE BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council hereby **DENIES** Zoning Application ZA-09-12 with respect to the property described above.

BE IT FURTHER RESOLVED The City Clerk shall certify to the passage and adoption of this Resolution and it shall thereupon take effect and be in force.

**PASSED AND ADOPTED this 16<sup>th</sup> day of June, 2009.**

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA   )  
  )ss  
COUNTY OF ORANGE    )

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of said City Council held on the 16<sup>th</sup> day of June, 2009, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
City Clerk  
City Council of the City of Costa Mesa

**EXHIBIT "A"**

**FINDINGS (If denied)**

- A. The information presented does not substantially comply with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed drive-through restaurant with outdoor seating is not substantially compatible with developments in the same general area. Granting the conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity.
- B. The information presented does not substantially comply with section 13-29(g)(1) of the Costa Mesa Municipal Code in that special circumstances are not applicable to the property exist to justify granting of the administrative adjustment from landscaped setback requirements along Gisler Avenue. Strict application of the zoning ordinance would not deprive the property owner of privileges enjoyed by owners of other property in the vicinity under the identical zoning classification.
- C. The information presented does not substantially comply with section 13-29(g)(6) of the Costa Mesa Municipal Code in that the maximum 4-foot reduction in the landscape setback along Harbor Boulevard will be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood and the improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space, and any other applicable features relative to a compatible and attractive development.
- D. The Costa Mesa City Council has denied ZA-09-12. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.

RECEIVED  
CITY CLERK



City of Costa Mesa

2009 MAY 18 AM 10:13

- ☐ Appeal of Planning Commission Decision/Rehearing - \$1,220.00  
☐ Appeal of Zoning Administrator/Staff Decision - \$690.00

CITY OF COSTA MESA

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name BOB COOPER - GREENBERG FARROW

Address 1920 MAIN STREET, SUITE 1150, IRVINE, CA 92614

Phone 949.296.0450 Representing IN-N-OUT BURGER

REQUEST FOR: ☐ REHEARING ☒ APPEAL ☐ REVIEW\*\*

Decision of which appeal, rehearing, or review is requested: (give application number, if applicable, and the date of the decision, if known.)

APPEAL OF ZA-09-12  
PLANNING COMMISSION DECISION OF 5/11/09

Decision by: PLANNING COMMISSION

Reasons for requesting appeal, rehearing, or review:

- IN-N-OUT BURGER CANNOT AGREE TO CONDITION OF APPROVAL #3 AS IT IS TOO OPEN ENDED TO ASSESS ITS FULL IMPACT ON THE IN-N-OUT PROJECT.
- IN ADDITION IN-N-OUT HAS CONCERN WITH THE LANGUAGE OF CONDITION #13.
- IN ADDITION IN-N-OUT DOES NOT AGREE WITH THE CONDITION OF APPROVAL, ADDED BY THE PLANNING COMMISSION, TO INSTALL A SIX FOOT HIGH SCREEN WALL BETWEEN IN-N-OUT'S PARKING FIELD AND THE ARCO GAS STATION.

Date: 5/18/09

Signature: 

\*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

\*\*Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

If appeal, rehearing, or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal, rehearing, or review:

3. From the meeting of April 27, 2009, Review of Zoning Administrator's approval of Zoning Application ZA-09-13, for John Puente, authorized agent for June O'Connor, for a Planned Signing Program for IN-N-OUT Burger Restaurant, located at 3211 Harbor Boulevard, in a C1 zone. Environmental determination: exempt.

Principal Planner Willa Bouwens-Killeen reviewed the information in the staff report for Zoning Application ZA-09-12 and said that she and Transportation Services Manager Raja Sethuraman were available to answer any questions and Mr. Sethuraman would answer any traffic-related questions. Assistant Planner Rebecca Robbins reviewed the information in the staff report for Zoning Application ZA-09-13.

Mr. Sethuraman and Ms. Bouwens-Killeen responded to questions from the Commission regarding circulation of the site, drive-through lanes, turning radius, queuing, spillage onto Harbor Boulevard, Condition No. 3 and the northerly fence along I-405, and signage.

The Chair pointed out that he and Commissioner Mensinger both met with IN-N-OUT representatives.

Doug Couper of Greenberg Farrow, Architect, made a presentation and stated that he would like Condition No. 3 removed. He expressed concern regarding working with Caltrans, needing a variance, sidewalk access, allowable landscaping, and the uncertainty of costs involved. He also spoke about the 30' diameter turning radius and the queuing for traffic concerns.

Mr. Couper explained that he stands behind the Traffic Impact Assessment by Overland Traffic Consultants and said there will be no spillage of vehicles waiting for the drive-through onto public streets.

In reply to Commissioner Mensinger's question as to what his position is relating to the fence, Mr. Couper responded there are unknown costs involved. A discussion ensued between them, and including Mr. Sethuraman, regarding building a fence with pilaster supports and reciprocal maintenance agreements with Caltrans. John Puente, with IN-N-OUT, added that he could probably research and build that type of fence.

Vice Chair Fisler and Mr. Couper discussed the Harbor Boulevard entrance, the Gisler Avenue entrance, queuing, eliminating the Harbor Boulevard entrance, Vagabond Inn access, and concerns about the intersection.

Jason Piazza, Costa Mesa, said he is a huge fan of IN-N-OUT, but expressed concern regarding the location of the proposed restaurant and the resulting traffic on Harbor Boulevard. He stated he sent four letters to the owner and suggested



that Vagabond Inn buy this property. He pointed out there should be no drive-through at this location and made some comments about the current traffic problems at the Harbor Boulevard/Gisler Avenue intersection/I-405 freeway.

Kellie Newcombe, granddaughter of owner June O'Connor, read a letter from June O'Connor and said she believes IN-N-OUT will be an excellent tenant, but is concerned about moving forward based on the conditions. The Chair stated he has spoken with Ms. Newcombe.

Jim Kiech, June O'Connor's son-in-law, expressed concern regarding the additional financial responsibilities placed on the owner/family relating to fencing and landscaping on Caltrans property. Also, he said this vacancy has been a burden to the family. He emphasized that the 26 residences within 1/4 mile of the proposed restaurant are closer to the freeway than to the restaurant.

The Chair asked Mr. Couper to return to the podium to discuss Condition No. 3. Mr. Couper said he could not commit to that condition because of the hidden costs involved, but agreed to the remainder of the conditions.

The Chair pointed out that this project location is the entrance and gateway to the City and the applicant needs to pay for this development.

Mr. Couper said he could not accept Condition No. 3.

Ms. Newcombe noted the costs were too vague and said this would be a burden placed on the applicant and the owner's family.

Commissioner Mensinger stated the burden is on the applicant; the owner and applicant will need to negotiate this matter as well as Caltrans and the developer noting that Harbor Boulevard is a very important asset.

Commissioner Clark mentioned there were quite a few public correspondence items received; noted his concern regarding the number of cars in the queue; and agreed with the Chair and Commissioner Mensinger regarding Condition No. 3. He also noted his concerns with the long-term aesthetic impacts this project could have on this important gateway to the City.

Commissioner McCarthy mentioned that most of the comments were regarding the spillage of vehicles onto Harbor Boulevard and said the major obstacle is the queuing.

Commissioner Mensinger, Ms. Bouwens-Killeen, and Mr. Couper discussed the landscaping and proposed screening wall along the east interior property line. Mr. Couper noted he needs to talk to IN-N-OUT concerning these issues.

The Chair pointed out that he has met with IN-N-OUT and discussed signage, stating he sees no reason to have the 65' sign on the I-405, and the Gisler

Avenue sign concerns him. He also said he was not in favor of these signs. He suggested the sign be similar in size to the 7-11 sign across the street.

The Commissioners discussed the signage issue, specifically the project being over-signed; the 65' sign proposed for the I-405; and the large sign proposed for Gisler Avenue, on what they considered a residential street. They also discussed having a smaller sign for Gisler Avenue to direct customers.

MOTION: Approve Zoning Application ZA-09-13, a planned signing program, removing Sign A1, and bringing Sign A3 down to the approximate size of 6' tall by 5' wide, similar to the 7-11 sign.

Moved by Chair James Righeimer, seconded by Commissioner Colin McCarthy.

During discussion on the motion, the Chair said the 65' freeway sign will not be allowed for that type of business.

Ms. Bouwens-Killeen pointed out that if the 65' freeway sign located less than 150' from the other sign on Harbor Boulevard is denied, the need for the signing program is removed and the applicant can obtain sign permits to build the 10' sign on Gisler Avenue because it is permitted by right. She explained that normally if the applicant wanted a 65'-high sign on the frontage, then an exchange could be that another sign might be reduced in size. She also explained the sign code information.

The Chair withdrew his motion and proceeded to make a new motion.

MOTION: Continue ZA-09-12 and ZA-09-13 to the Planning Commission meeting of June 8, 2009.

Moved by Chair James Righeimer.

During discussion on the motion, the Chair explained his reasons for continuing both items. A discussion ensued regarding the continued date and Ms. Bouwens-Killeen stated June 8 would be the continued date.

Commissioner McCarthy expressed his concerns with holding the project because of the sign issues. A discussion ensued regarding the project, sign entitlement, and a continuance.

Commissioner McCarthy stated he would not support the continuance.

Ms. Newcombe asked if she could return to the podium and pointed out that this was not fair to push back this project.

Commissioner Mensinger mentioned that this is the approval process; administrative adjustments are based on conditions; and you may not get the outcome you want. Mr. Couper agreed to the continued date of June 8.

A discussion ensued about asking if the smaller sign on Gisler Avenue would be agreeable to the applicant and the applicant did not agree. Commissioner McCarthy mentioned that he thought the applicant was being severely prejudiced.

Vice Chair Fislser agreed with Commissioner McCarthy and proceeded to make a motion. The Chair said he withdrew his motion to continue the items.

**MOTION: Reverse Zoning Administrator's decision and denied Zoning Application ZA-09-13, by adoption of Planning Commission Resolution PC-09-20, based on the evidence in the record and the denial findings contained in Exhibit "A".**

**Moved by Vice Chair James Fislser, seconded by Commissioner Colin McCarthy.**

Commissioner Clark inquired about the reverse signage request and there was a discussion.

The motion carried by the following roll call vote:

Ayes: Chair James Righeimer, Vice Chair James Fislser, Commissioner Sam Clark, Commissioner Colin McCarthy, and Commissioner Stephen Mensinger

Noes: None.

Absent: None.

The Chair explained the appeal process.

2. From the meeting of April 27, 2009, Review of Zoning Administrator's approval of Zoning Application ZA-09-12, for John Puente, authorized agent for June O'Connor, for a minor conditional use permit for an IN-N-OUT Burger Restaurant open until 1:00 a.m. weekdays and 1:30 a.m. weekends with drive-through and outdoor seating within 10 feet of the drive-through lane; an administrative adjustment to allow a 12-foot landscape setback along Gisler Avenue (20 feet required); and a minor modification to allow a 16-foot setback along a portion of the Harbor Boulevard frontage (20 feet required), located at 3211 Harbor Boulevard, in a C1 zone. Environmental determination: exempt.

**MOTION: Uphold Zoning Administrator's approval of Zoning Application ZA-09-12, by adoption of Planning Commission Resolution PC-09-21, based on the findings contained in Exhibit "A", subject to conditions in Exhibit "B", with additional Condition No. 21, adopted as follows:**

#### **CONDITIONS OF APPROVAL**

21. To screen the ARCO station from off-site views, construct a 5- to 6-foot high decorative block wall along the interior east and south property lines, where permitted, under the direction of Planning staff.

**Moved by Commissioner Colin McCarthy, seconded by Vice Chair James Fisler.**

During discussion on the motion, Commissioner McCarthy invited Commissioner Mensinger to make a substitute motion relating to the conditions and Vice Chair Fisler suggested using City staff's wording. Vice Chair Fisler also expressed concern about the freeway exiting at that intersection.

In response to Commissioner Mensinger's question about the process for adding conditions to a motion, Deputy City Attorney Tom Duarte replied that the maker of the motion and the seconder need to agree.

Commissioner Mensinger discussed the area between IN-N-OUT and the Arco gas station, and placing a wall and landscaping as a visual separation. Both the maker of the motion and the seconder agreed.

As concerns the proposal to require a wall along the interior south and east property lines, the Chair, Commissioner Mensinger, Ms. Bouwens-Killeen, and Mr. Couper discussed maintaining the 2-way driveway; and referenced the Arco gas station property and the access agreement with the Arco gas station and the Vagabond Inn.

John Puente asked the Commissioners if landscaping could be used instead of a wall. He also brought up the issue of graffiti. Commissioner Mensinger commented on the advantages of having a wall and the Chair said he appreciates everyone working together on this project.

Vice Chair Fisler and Commissioner Mensinger discussed the placement of a wall and the softening effect of landscaping.

The motion carried by the following roll call vote:

Ayes: Chair James Righeimer, Vice Chair James Fisler, Commissioner Sam Clark, Commissioner Colin McCarthy, and Commissioner Stephen Mensinger

Noes: None.

Absent: None.

The Chair explained the appeal process.

CITY OF COSTA MESA  
Development Services Department  
Post Office Box 1200  
Costa Mesa, California 92628-1200

PROJECT NO: Zoning Application ZA-09-12

DATE: May 14, 2009

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At its regular meeting of May 11, 2009, the Planning Commission recommended approval of Planning Application ZA-09-12 by adoption of Planning Commission Resolution PC-09-21. (5-0)

Planning Commissioner Chair Jim Righeimer requests review of ZA-09-12, a minor conditional use permit for a new In 'n Out Burger.

This decision will become final unless appealed by 5 p.m., May 18, 2009, by the filing of the necessary form and fees with the City Clerk's office, located at 77 Fair Drive, Costa Mesa.

Should you have any questions concerning the enclosures or the Commissioner's decision, or should you wish to appeal the decision to the City Council, please contact project planner Willa Bouwens Killeen @ 714-754-5153.

Sincerely,



KIMBERLY BRANDT  
Acting Development Services Director  
Acting Executive RDA Director

CC:

File

John Puente  
13502 Hamburger Lane  
Baldwin Park, California 91706

June O'Connor  
Post Office Box 1942  
Newport Beach, California 92649

**RESOLUTION NO. PC-09-2/**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF COSTA MESA APPROVING ZONING APPLICATION ZA-09-12**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS  
FOLLOWS:

WHEREAS, an application was filed by John Puente authorized agent for property owner June O'Connor, with respect to the real property located at 3211 Harbor Boulevard, requesting a minor conditional use permit for an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating; an administrative adjustment to allow a 17-foot deep landscaped setback along Gisler Avenue; and a 16-foot deep landscaped setback along a portion of Harbor Boulevard in the C1 zone; and

WHEREAS, Planning Commission Chair James Righeimer requested a review of ZA-09-12 on April 13, 2009; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 27, 2009 and May 11, 2009.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby upholds the Zoning Administrator's approval and **APPROVES** Zoning Application ZA-09-12 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Zoning Application ZA-09-12 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B", as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

**PASSED AND ADOPTED this 11<sup>th</sup> day of May, 2009.**

  
\_\_\_\_\_  
James Righeimer, Chair  
Costa Mesa Planning Commission

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF ORANGE )


I, Khanh Nguyen, Acting Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on May 11, 2009, by the following votes:

AYES: COMMISSIONERS: RIGHEIMER, FISLER, CLARK, MCCARTHY, MENSINGER

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

  
Secretary, Costa Mesa  
Planning Commission

**EXHIBIT "A"****FINDINGS (If approved)**

- A. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed drive-through restaurant with outdoor seating is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, with the exception of the proposed administrative adjustment and minor modification for reduced setback landscaped area and the placement of outdoor seating within 10 feet of the drive-through lane, the proposed project satisfies all applicable development standards. The closest residential properties are 189 feet to the northwest and a motel separates the residences and the proposed use. Additionally, no alcoholic beverages will be served or sold from this site and the use will provide a service to motel patrons. Although two of the five outdoor tables will be less than 10 feet from the drive-through lane, the two seats will be at the entry of the approximately 240-foot long drive-through lane, which could reduce the time cars idle next to the seats. Additionally, the majority of the seating is provided inside the building. Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.
- B. The information presented substantially complies with section 13-29(g)(1) of the Costa Mesa Municipal Code in that special circumstances applicable to the property exist to justify granting of the administrative adjustment from landscaped setback requirements along Gisler Avenue, as modified by the Zoning Administrator. Strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by owners of other property in the vicinity under identical zoning classification. Specifically, existing drive aisles and parking on the two abutting properties affect the design of the landscaping along this street frontage. The deviation shall be subject to such conditions so as to assure that approval of the administrative adjustment from setback requirements would not constitute a grant of special privilege inconsistent with limitation upon other properties in the vicinity and zone in which the property is situated. Granting the variance will not allow a use, density, or intensity, which is not in accordance with the general plan designation and specific plan for the property.
- C. The information presented substantially complies with section 13-29(g)(6) of the Costa Mesa Municipal Code in that the maximum 4-foot reduction in the landscape setback along Harbor Boulevard will not be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood and the improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space, and any other applicable features relative to a compatible and attractive development. Specifically, this reduction is the result of a future right turn pocket that will begin on this property and continue to the Gisler intersection. The



remainder of the setback is provided as required, and additional planter area will be provided behind this future turn pocket, which will off-set some of the reduction. Lastly, the building is setback approximately 45 feet from Harbor Boulevard.

- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15302.
- E. The project, as condition, is consistent with Chapter XII, Article 3, Transportation System Management of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated by the payment of traffic impact fees.

## EXHIBIT "B"

### CONDITIONS OF APPROVAL

- Plng. 1. Incorporate the two-foot bumper overhang of parking spaces into abutting on-site landscaped areas.
2. Incorporate Low Impact Development (LID) design techniques into all landscape areas, under the direction of Planning and Public Services staff.
3. Upon the effective date of approval of the minor conditional use permit, applicant shall immediately begin working with the Transportation Services Division and Cal Trans to replace the chain link fence along the off ramp with a combination wrought iron with pilaster supports or other fence/barrier acceptable to both the City and Cal Trans, and to landscape the area between the property line and V ditch consistent with abutting on-site landscape. The off-site fencing and landscaping plan shall be submitted for review and approval to the Planning Division. Issuance of the certificate of occupancy shall not be withheld pending the completion of this condition; however, the applicant shall provide documentation of the progress and estimated time of completion of this condition prior to release of the certificate of occupancy.
4. As feasible, reduce the width of the three access driveways as close as possible to a 20-foot minimum width.
5. Increase the depth of the easternmost landscape planter along Gisler Avenue to a minimum 17 feet.
6. Provide landscaping along the east property line where it abuts landscaping on the gas station property.
7. The subject property's ultimate finished grade level may not be filled/raised unless necessary to provide proper drainage, and in no case shall it be raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site stormwater flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public stormwater facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties.
8. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
9. The conditions of approval and ordinance or code provisions of Zoning

Application ZA-09-12 shall be blueprinted on the face of the site plan as part of the plan check submittal package.

10. The applicant shall contact the Planning Division to arrange Planning inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
11. It is recommended that the project incorporate green building design and construction techniques where feasible. The applicant may contact the Building Safety Division at 714.754.5273 for additional information.
12. The restaurant shall be limited to the type of operation described in the staff report. Any change in the operational characteristics including, but not limited to, hours of operation, sale of alcoholic beverages or provision of entertainment, will require approval of an amendment to the minor conditional use permit, subject to either Zoning Administrator or Planning Commission approval.
13. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
14. Transformers, backflow preventers, and any other above-ground utility improvements, shall be located outside of the required street setback area and shall be screened from view, under the direction of Planning staff.
15. Hours of operation for customer service are limited to 6 a.m. to 1 a.m. Monday through Thursday and 6 a.m. to 1:30 a.m. Friday, Saturday, and Sunday.
16. On-site controls (i.e., cones and employees) shall be instituted during peak operating times to minimize idling vehicle emissions.
17. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts shall be permitted.
18. Truck deliveries shall not occur between 8 p.m. and 4 a.m.
- Eng. 19. During construction, maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
- Trans 20. Install a sign at the exit of the drive-through lane directing drivers to exit Gisler Avenue to access the I-405 Freeway. A similar sign shall be located facing eastbound drivers as they enter the aisle leading to Harbor Boulevard.
- PIng. 21. To screen the ARCO station from off-site views, construct a 5- to 6-foot  
Comm high decorative block wall along the interior east and south property lines, where permitted, under the direction of Planning staff.



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: MAY 11, 2009

VI. 2

ITEM NUMBER:

SUBJECT: ZONING APPLICATION ZA-09-12  
IN 'N OUT BURGER  
3211 HARBOR BOULEVARD

DATE: APRIL 30, 2009

FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP  
PRINCIPAL PLANNER  
(714) 754-5153

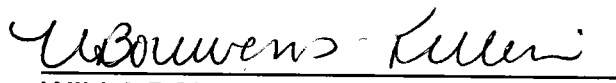
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## **PROJECT DESCRIPTION**

Planning Commission review of ZA-09-12, a minor conditional use permit for a new In 'n Out Burger, was continued from the April 27, 2009, Planning Commission meeting.

## **RECOMMENDATION**

Uphold the Zoning Administrator's approval of the project.

  
WILLA BOUWENS-KILLEEN, AICP  
Principal Planner

  
KHANH NGUYEN  
Acting Asst. Development Services Director

## **BACKGROUND/ANALYSIS**

At the April 27, 2009 meeting, Planning Commission opened a public hearing to allow an attendee to speak on this item since he will be unable to attend the May 11<sup>th</sup> meeting. The speaker expressed concerns with possible traffic conflicts because of the popularity of In 'n Out Burger.

Although the replacement of Kaplan's restaurant by In 'n Out did not generate enough additional traffic to warrant the requirement of a full traffic study, the City's Transportation Services Division requested and received a traffic impact assessment to ensure that traffic entering and exiting the site as well as proposed on-site circulation would not adversely impact the site or the adjacent intersection and streets. Based on this assessment, Transportation Services determined that the circulation proposed by the applicant was acceptable.

The remainder of the analysis and the alternatives and recommendation remain unchanged from the staff report prepared for the meeting of April 27, 2009. The original staff report is attached and is also available on line:

<http://www.ci.costa-mesa.ca.us/council/planning/2009-04-27/042709ReviewZA0912.pdf>

Attachments:      1.      Draft Planning Commission Resolutions  
                         2.      Traffic circulation report  
                         3.      Staff report for the meeting of April 27, 2009

cc:                    Deputy City Manager - Dev. Svs.  
                         Senior Deputy City Attorney  
                         City Engineer  
                         Fire Protection Analyst  
                         Staff (4)  
                         File (2)

John Puente  
13502 Hamburger Lane  
Baldwin Park, CA 91706

June O'Connor  
P.O. Box 1942  
Newport Beach, CA 92649

File: 051109ZA0912	Date: 043009	Time: 8:30 a.m.
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**APPLICANT LETTER  
DESCRIPTION OF JUSTIFICATION FORM**

**IN-N-OUT BURGER at HARBOR BLVD. AND GISLER AVE.**

**COSTA MESA, CA**

**DESCRIPTION OF REQUEST**

Request for a Minor Conditional Use Permit for an IN-N-OUT Burger with a drive-thru and outdoor seating. In addition an Administrative Adjustment is required to reduce the landscape setback along Gisler Avenue to 12 feet, and a Minor Modification is required to reduce the landscape setback along Harbor Blvd., due to a future 8 feet right turn dedication.

The proposed IN-N-OUT Burger, a fast-food restaurant with drive-thru, is located at the NWC of Harbor Boulevard and Gisler Avenue. The proposed 3,265 sq. ft. IN-N-OUT Burger restaurant will have indoor dining, outdoor patio seating, and a drive-thru window. A Minor Conditional Use Permit is required for drive-thru restaurants and outdoor seating per City of Costa Mesa.

Proposed vehicle queuing/stacking in the drive-thru lane is over 250 linear feet and can accommodate fourteen vehicles (or more, depending upon size) from the drive-thru pick-up window to the entry sign. Approximately forty nine (49) parking spaces, including three (3) ADA van accessible spaces are provided.

**HISTORICAL DATA, ZONING, AND REGULATORY APPROVALS**

The proposed IN-N-OUT Burger property is where the vacant Kaplan's Deli building stands. The site has been vacant for over three years.

The site is zoned C-1, Local Business. Restaurants are a permitted use in the C-1 zone.

As stated previously, IN-N-OUT Burger, is requesting review and approvals for a Minor Conditional Use Permit due to their drive-thru and outdoor seating.

Approval from the Orange County Environmental Health is required for all new food establishments prior to the issuance of the building permit.

Rendered elevations with signage for the IN-N-OUT Burger are attached for reference. It should be noted that signage will be approved under a separate sign permit.

## **OPERATION ASPECTS**

The site lighting fixtures and poles will comply with the City of Costa Mesa's regulations.

The building setbacks adjacent to the City of Costa Mesa right-of-way have been honored. An Administrative Adjustment to reduce the landscape setback along Gisler Avenue to 12 feet, and a Minor Modification for a reduced landscape along Harbor Blvd., due to a future 8 feet right turn dedication, are required due to the unusual site configuration.

All service equipment (such as trash enclosures, transformers, drive-thru menu boards, and customer pick-up windows) is adequately screened from public view.

The IN-N-OUT Burger's hours of operation are Sunday thru Thursday 10:30 am to 1:00 am and 10:30 am to 1:30 am Friday and Saturday. There are 50 full and part-time employees with an average of 16 employees per shift. The typical IN-N-OUT Burger has 2 shifts per day and contracts with an independent cleaning crew after business hours.

## **CONCLUSION**

As designed the proposed IN-N-Out Burger restaurant will adhere to the requirements of the City of Costa Mesa. As the Agent for the Applicant, GreenbergFarrow will work closely with the City of Costa Mesa to ensure that all the project documents will be coordinated and the entitlement approvals, plan check, permitting, and construction processes will proceed in an orderly fashion.

The proposed IN-N-OUT Burger will be a positive addition to the City of Costa Mesa and bring new life to a vacant restaurant site. The company's focus on customer service and consistently high quality food product will be enjoyed and treasured by the nearby residents.

## PLANNING APPLICATION SUMMARY

Location: 3211 Harbor Boulevard Application: ZA-09-12

Request: Minor conditional use permit to construct an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating.

### SUBJECT PROPERTY:

Zone: C1  
 General Plan: General Commercial  
 Lot Dimensions: Irregular  
 Lot Area: 52,272 sq.ft.  
 Existing Development: Approximately 6,600 sq.ft. restaurant (vacant)

### SURROUNDING PROPERTY:

North: Off ramp for 405 Freeway  
 South: C1 – gas station; Across Gisler: C1 -- vacant gas station and 7-11  
 East: Across Harbor – C1, Car Max  
 West: C1 – Vagabond Inn Motel

## DEVELOPMENT STANDARD COMPARISON

### Development Standard

### Required/Allowed

### Proposed/Provided

Lot Size:			
Lot Width	120 ft.	124 ft.	
Lot Area	12,000 sq.ft.	52,272 sq.ft.	
Floor Area Ratio:	.2 (10,454 sq.ft.)	.06 (3,265 sq.ft.)	
(High Traffic FAR)			
Building Height:	2 stories/30 ft.	1 story/30 ft.	
Interior Landscaping	1,300 sq.ft.	3,000 sq.ft.	
Setbacks (Harbor Boulevard is front):		Bldg.	Lnscp.
Front	20 ft.	45 ft.	16 to 20 ft.
Side (left/right)	20 ft./0 ft.	60 ft./3 ft.	12 -- 17 ft.*/NA
Rear	0 ft.	144 ft.	NA
Parking:			
Standard	33	49	
Handicapped	2	3	
TOTAL	35	52	
Driveway Width:	20 ft.	16** to 20 ft. minimum	
Drive-through Length:	160 foot minimum	240 feet	
Drive-through entrance from public street	25 feet minimum	170 feet	
Drive-through width:	11 feet minimum	11 feet	
Outdoor seating from drive-through:	10 feet minimum	4 feet minimum ***	

CEQA Status Exempt, Class 2 (Replacement or Reconstruction)

Final Action Zoning Administrator

\* Easternmost planter depth Conditioned to be increased from 12 ft. to 17 ft.

\*\* 16-foot width is nonconforming.

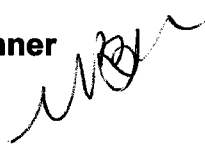
\*\*\* See discussion in staff report



# City of Costa Mesa

## Inter Office Memorandum

TO: Planning Commission

FROM: Willa Bouwens-Killeen, AICP, Principal Planner 

DATE: May 7, 2009

SUBJECT: ZA-09-12 – IN 'N OUT BURGER  
RESPONSE TO LETTER FROM CHARLENE ASHENDORF  
\*SUPPLEMENTAL MEMO\*

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Charlene Ashendorf, a property owner on Montana Avenue in Costa Mesa, asked for some additional information in a letter to James Righeimer dated April 29, 2009. A summary of the questions and Planning staff's response are as follows:

1. What is the projected length of time for construction of the project, including demolition of the existing building?

Once building permits are obtained, typical demolition and construction time is four months.

2. What are the proposed delivery times for food service?

Condition of approval number 18 prohibits truck deliveries between 8 p.m. and 4 a.m.

3. Are the drive-through hours consistent with those approved for McDonalds and Burger King?

Mc Donald's hours are from 5:30 a.m. to midnight. Burger King's hours are from 7 a.m. to midnight Sunday, 6 a.m. to midnight Monday through Wednesday, and 6 a.m. to 2 a.m. Thursday through Saturday. In 'n Out's proposed hours are from 10:30 a.m. to 1 a.m. Monday through Thursday and 10:30 a.m. to 1:30 a.m. Friday through Sunday. (The condition allows them to open at 6 a.m. should they wish to in the future, consistent with what Code permits for restaurants.)

In' n Out is separated from the residences by a distance of approximately 189 feet and a motel; Burger King abuts residential property and McDonald's is separated from the closest residences by only a street.

4. Will signage be visible to residents?

Although a 65-foot sign height was approved by the Zoning Administrator for one of the signs, the sign is approximately 495 feet away from residentially zoned property with visibility blocked by existing trees and buildings.

5. How will impacts of a drive-through establishment on use and safety be mitigated?

The City's Transportation Services Division requested and received a traffic impact assessment to ensure that traffic entering and existing the site as well as proposed on-site circulation would not adversely impact the site or the adjacent intersection and streets. Based on this assessment, Transportation Services determined that the circulation proposed by the applicant was acceptable.

6. How will Vagabond Motel's concerns regarding lighting, noise, and commotion be mitigated?

Impacts should be minimal since only 6 of the 133 rooms of the motel face the project site. Furthermore, motels are commercial uses.

cc:                   Acting Development Services Director  
                      Acting Asst. Development Services Director  
                      Senior Deputy City Attorney  
                      City Engineer  
                      Fire Protection Analyst  
                      Staff (4)  
                      File (2)

Charlene Ashendorf  
3210 Montana Avenue  
Costa Mesa, CA 92626

John Puente  
13502 Hamburger Lane  
Baldwin Park, CA 91706

June O'Connor  
P.O. Box 1942  
Newport Beach, CA 92649

File: 051109ZA0912SuppMemo	Date: 050709	Time: 8:15 a.m.
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April 29, 2009

Mr. James Righeimer, Chair  
City of Costa Mesa Planning Commission  
77 Fair Drive  
Costa Mesa, CA 92627

RE: In 'N Out Burger 3211 Harbor Boulevard, Costa Mesa, CA

Dear Chair Righeimer and Planning Commissioners:

I appreciate the opportunity to voice my concerns regarding the In 'N Out Burger Zoning Application.

Harbor Boulevard at the 405 Freeway is an entry to our city. As you drive under the freeway overpass you can almost "see" the Welcome to Costa Mesa sign. For years a dilapidated and abandoned restaurant has served as an eyesore to greet visitors and residents.

As we begin the application process that examines the appropriate planning of this site, which includes In 'N Out Burger, several items come to mind that I hope the commission will consider in the process and respond to:

- 1) If approved, what is the projected length of time for demolition and construction leading to opening of restaurant?
- 2) Sound from the 405 continues to have an impact on the quality of life for local residents, can you explain the proposed delivery times for food service?
- 3) Are the drive through hours that will impact our neighborhood with hours of operation to 1:00 and 1:30 AM in keeping with that of the local McDonald's and Burger King?
- 4) On-site controls for idling and traffic during peak hours have proven ineffective at other local In 'N Out establishments such as the one located in Santa Ana on Bristol.
- 5) Will the signage be visible to residents throughout the state streets? Signs and sign ordinance compliance are of important to maintaining the integrity of our residential neighborhood.
- 6) Considering the pedestrian traffic for parents and students on Gisler, especially for those who walk to Harbor for bus transportation, safety will be a major concern.
- 7) Keeping in mind that Gisler is heavily trafficked in the evenings and on weekends for sports related activities, a drive through establishment will definitely impact use and safety. How will this be addressed?
- 8) Concerns voiced by Vagabond Motel regarding lighting, noise and commotion should be taken into consideration, how will they be mitigated?

Thank you for your service to Costa Mesa. I look forward to hearing from you.

*Charlene M. Ashendorf*  
Charlene M. Ashendorf  
3210 Montana Ave., Costa Mesa  
cmash@ashendorf.com